

FINDINGS

DUCHESNE COUNTY

COMMISSIONERS

MARCH 23, 2015

FILE NAME: Nelson Minor Subdivision
APPLICANT: Terry and DeAnn Nelson (Lewis Arnold, Appellant)
PROPOSAL: 2 lot minor subdivision
LOCATION: 3358 South 5000 West, in the South ½ of the NE ¼ of Section 3, Township 3 South, Range 2 West, in the Ioka area.
ZONING DESIGNATION: A-5 (considered R-1 with Johnson Water)

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FINDINGS OF FACT

1. PROPOSAL DESCRIPTION

The applicants are proposing to divide an 8.101-acre parcel into parcels 7.101 and 1.0 acres in size. The 1.0-acre parcel contains an existing dwelling unit. The 7.101-acre parcel is a proposed building lot. The Duchesne County Community Development Director is the land use authority for such minor subdivisions. However, in this case, the staff decision was appealed to the Planning Commission after an administrative hearing was held on January 6, 2015. The Planning Commission decision on February 11, 2015 was then appealed to the County Commissioners.

2. HISTORY OF EVENTS

July 14, 2014	The application was submitted.
October 7, 2014	The application was deemed complete.
October 7, 2014	Notice mailed to property owners within three hundred feet (300') of the subject property.
October 14, 2014	Hearings Officer decision date (last day to request hearing)
October 13, 2014	Request for an Administrative Hearing received
December 4, 2014	Revised minor subdivision survey received
December 12, 2014	Revised application deemed complete
December 15, 2014	Notice of revised proposal mailed to property owners within three hundred feet (300') of the subject property.
December 22, 2014	Hearings Officer decision date (last day to request hearing)
December 19, 2014	Request for an Administrative Hearing received
January 6, 2015	Administrative Hearing held
January 7, 2015	Hearings Officer final decision issued and mailed
January 16, 2015	Hearings Officer decision appealed to Planning Commission
January 23, 2015	Notice of Planning Commission hearing mailed to property owners within three hundred feet (300') of the subject property.
January 27, 2015 and February 3, 2015	Notice of Planning Commission hearing published in the <i>Uintah Basin Standard</i>
February 11, 2015	Planning Commission hearing & decision to conditionally approve
February 23, 2015	Planning Commission decision appealed to County Commissioners
March 3, 2015	Notice of County Commission hearing mailed to property owners within three hundred feet (300') of the subject property.
March 10 & 17, 2015	Notice of County Commission hearing published in the <i>Uintah Basin Standard</i>
March 23, 2015	County Commission hearing

3. DUCHESNE COUNTY SUBDIVISION CODE (Findings are listed in bold type)

“Minor Subdivision” means the division of land into nine or fewer parcels provided that:

1. A minor subdivision survey is prepared by a professional land surveyor for review and a decision by the land use authority after the required public notice; **(The survey, dated December 4, 2014, was prepared by M&M Associates Surveying).**
2. Minimum lot size and other land use standards are met (or a variance granted); **(The zoning of this property is A-5, which is an agricultural-residential**

zone with a 5-acre minimum lot size. However, parcels down to 1.0 acre in size are allowed with a culinary water connection. The proposed division meets this standard).

3. Written approval has been received from the sanitary sewer authority; (The designated sanitary sewer authority for Duchesne County is the Tri-County Health Department. Health department approval of the revised minor subdivision proposal was received by letter dated December 10, 2014.

After receiving notice from Duchesne County that there are potential groundwater and agricultural run-off concerns in this area, the TriCounty Health Department required another assessment of soil conditions on proposed Lot 2. Eric Larsen, Licensed Environmental Health Scientist with TriCounty Health, stated at the administrative hearing that groundwater was encountered in the latest site assessment trench at about seven feet. He noted that evidence of historic higher groundwater 3 to 4 feet from the surface was noted. As a result, the site assessment report includes a requirement that a curtain drain be installed near the west property line of proposed Lot 2 to protect the future home and on-site wastewater system from water that could migrate under or across that property line. Mr. Larsen has assured Duchesne County that this curtain drain will be a requirement of the onsite wastewater disposal permit to be issued for Lot 2. The applicants indicated that they plan to construct such a drain as a preventative measure, to a depth of about 7 feet. The septic system drain field will then be installed at a depth at least two feet above the depth of this drain.

Opponents of this request presented, at the administrative hearing, results of groundwater monitoring conducted on the Arnold property near the northwest corner of proposed Lot 2. This monitoring, using a piezometer tube, produced results from July 2012 to October 2014. Opponents and proponents at the administrative hearing volunteered to provide Duchesne County and TriCounty Health with additional hydrological data from their expert witnesses associated with a pending lawsuit. Mr. Larsen indicated that the health department had enough information at this time to deem proposed Lot 2 to be a suitable home site.

On February 6, 2015, the County received a letter from J. Craig Smith and Kathryn J. Steffey, Smith-Hartvigsen, Attorneys at Law. This letter contained a recommendation from Loughlin Water Associates LLC *“that the minor subdivision request be postponed until such time that the applicant provides details of site conditions, locations and features of*

structures to be built, and the design of drain system. Site conditions should be investigated, and qualified person(s), such as a geotechnical engineer, should design the drainage system.”

This recommendation has been reviewed by the TriCounty Health Department. The health department stands by their determination, after two site assessments, that the proposed new parcel is a suitable building site. However, the health department has decided not to issue a wastewater permit for the septic system until such time as the applicants have had their proposed land drain system designed by a licensed geotechnical engineer or hydrogeologist.

In the applicant’s appeal letter dated February 23, 2015, they quote provisions in the county *zoning ordinance* regarding the protection of public health, safety and welfare. These provisions are not applicable in this case as the request is for a minor subdivision under the provisions of the county *subdivision ordinance*.

In the applicant’s appeal letter dated February 23, 2015, they quote provisions in the county *zoning ordinance* regarding the floodplain overlay zone. These provisions are not applicable in this case as the request is for a minor subdivision under the provisions of the county *subdivision ordinance*. Also, the flood zone provisions do not come into effect until such time as flood zone maps are developed for the county.

On the second and final page of the applicant’s appeal letter, dated February 23, 2015, they quote provisions in the county *subdivision ordinance* regarding public welfare and preliminary plat requirements. Minor subdivisions are not required by the county *subdivision ordinance* to meet the preliminary plat requirements of standard subdivisions. Separate review criteria are established in the *subdivision ordinance* for minor subdivisions. All of the criteria for approval of this minor subdivision will be met if the sanitary sewer authority is satisfied with the design of the land drain.

The appellants request that the County postpone approval of the minor subdivision request until the land drain (which will protect both the home and the septic system) is engineered and accepted by TriCounty Health. The Planning Commission recommends that approval of the land drain occur before issuance of a waste water permit rather than before minor subdivision approval. This is because the property owner is not required to obtain minor subdivision approval to build the home (the County allows more than one home to be built on the existing 8-acre parcel). However, the property owner does need a wastewater permit before obtaining a building permit to construct the home.

4. All parcels have public right of way access and no additional right of way is required to be dedicated from the applicant's property pursuant to the Official Map or county standards; **(The proposed parcels have frontage on and access to a County Road known as 5000 West [County Road #63]. The county claims a 66-foot right of way on such roads and no additional right of way needs have been identified at this location).**
5. Has a water source, approved in writing by the culinary water authority; **(The existing home and the proposed building site will obtain water from the Johnson Water District according to the health department letter).**
6. No further division by minor subdivision shall be allowed within one (1) year. Further division within one (1) year shall be accomplished by the standard subdivision process or by an amendment to a previous minor subdivision survey. **(No further minor subdivisions could occur on this property until March 23, 2016 unless by amendment of this minor subdivision).**
7. Divisions requiring the construction of public roads, public water lines or public sewer lines are not eligible for the minor subdivision process; **(No public road, public water line or public sewer line construction is required in this case).**
8. The minor subdivision survey map is recorded in the County Recorder's Office and filed with the County Surveyor. **(After the minor subdivision is approved and the County Treasurer has signed the survey, [after any property taxes due have been paid] the survey map will need to be recorded at the County Recorder's Office along with deeds required to establish ownership of the two newly-described parcels. The surveyor will need to file a Mylar copy of the survey with the County Surveyor's Office. If the existing parcel is mortgaged, it is the responsibility of the owner to obtain approval of the lender(s) before the property is divided).**

9-3-3: MINOR SUBDIVISION REVIEW PROCEDURES:

The zoning administrator is the land use authority for minor subdivisions and shall act as the hearing officer for minor subdivisions. A notice of intent to act upon a minor subdivision request shall be mailed to property owners within three hundred feet (300') of the land being subdivided. Said notice to be mailed at least seven (7) days in advance of the administrative decision date. The community development administrator shall use the standards in the definition of "minor subdivision", as defined in section 9-1-4 of this title, in making the decision to approve, approve with conditions, or deny the request. The planning commission shall serve as the appeal authority for administrative minor subdivision decisions.

CONCLUSIONS

1. The applicants have complied with all requirements of the Duchesne County Subdivision Ordinance for minor subdivision approval.
2. The request is valid, provided that the requirements of the TriCounty Health Department for an engineered land drain system are followed.

DECISION

Adoption of the above findings of fact and conclusions of law to uphold the decision of the Duchesne County Planning Commission to grant the minor subdivision requested by Terry and DeAnn Nelson and deny the appeal by Lewis Arnold. This decision is made with the understanding that the TriCounty Health Department will not issue a wastewater permit for the septic system serving the proposed home on Lot 2 until such time as the applicants have had their proposed land drain system designed by a licensed geotechnical engineer or hydrogeologist.